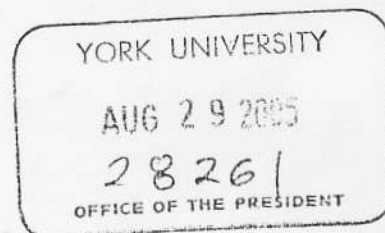


## Memorandum



To: Lorna R. Marsden

From: Harriet Lewis 

Re: **Hate Propaganda**

Date: August 25, 2005

You have asked us to comment on the article entitled "Israel Lobby Loses York" (allegedly written by David Noble) from the point of view of whether it constitutes hate propaganda.

We understand that the purpose of the consideration is to prepare the university should one or more members of the York community (student, faculty or staff) take the position that the article is so offensive as to constitute a breach of the law as reflected in the Criminal Code and/or of our University Guidelines Concerning Hate Propaganda.

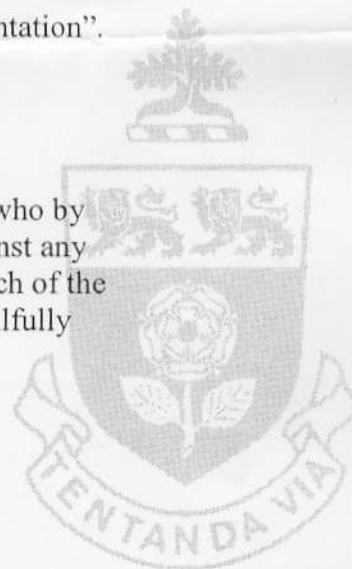
### **The Criminal Code of Canada**

The Code creates the offences of "Advocating Genocide" and "Public Incitement of Hatred" which offences are generally referred to under the heading of Hate Propaganda. (Sections 318 and 319)

Both sections create an offence if statements are about or targeted at an "identifiable group" which is defined as "any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation".

We are of the opinion that the offending article does not advocate genocide.

As to incitement of hatred, the Code would censure an individual who by "communicating statements in any public place incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace" ( 319 (1)), or who "other than in a private conversation, willfully promotes hatred against any identifiable group" (319(2)).



The Code also establishes defences to any such charges (319(3)), for example when

- the accused individual establishes that the statements were true, or
- the accused in good faith expressed or attempted to establish by argument an opinion on a religious subject, or
- the accused establishes that the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true.

### **University Guidelines**

Our guidelines are consistent with the definitions in the Criminal Code and in addition provide for sex and gender identification as additional factors.

### **Conclusion**

Our reading of the Noble article is that it contains many quotes from others, many documented facts and some opinion expressed clearly as such. It also contains statements as fact which are not true, and conclusions which are inflammatory and in respect to individuals may also be defamatory and thus actionable.

However, given the burdens of proof, and the defenses provided by the Code, we are of the view that Professor Noble would not, on the basis of the article, be likely to be convicted of the offence of Public Incitement of Hatred. There are few decided cases to assist in this opinion.